in the United States to institute martial law. At this point he differs with Judge HARE, who, in his learned work on "Constitutional Law," takes the position that the Executive alone has the power to declare martial law. Lieutenant BIRKHIMER would also give this power to Congress. We advise those of our readers who desire to come to a definite conclusion on this interesting and important question to read the arguments of both Judge HARE and Lieutenant BIRKHIMER. It is in this argument that our author's ability as a constitutional lawyer is put to a severe test.

If we were asked to point out the distinguishing feature of the book, we should say that it was the care and exhaustive knowledge of the decisions of the Supreme Court of the United States. It is seldom we have the pleasure of recommending to our readers who may be interested in a particular subject a work better fitted to supply them with accurate and complete knowledge in an entertaining form. W. D. L.

COMMENTS ON RECENT DECISIONS.

ANOTHER VIEW OF REEVES *v.* PHILADELPHIA TRACTION COMPANY.

THE annotator's view of the decision in Reeves *v.* Philadelphia Traction Co., 152 Pa., 153, *supra*, 127, as "so consistent with the trend of judicial precedents, not only in Pennsylvania but elsewhere," can be shared only by those who hold with the Court that the Act of May 8, 1876, P. L., 147, "relating to the use of motive power upon passenger railways," is a regulation of municipal affairs affecting only incidentally the charters of certain railway corporations. If the Act be regarded as designed primarily to extend the franchises of passenger railway companies, and merely involving incidentally a regulation of municipal affairs, then the limitation of its operation to cities of the first class would be local legislation, and, therefore, unconstitutional.

That the Act concerns municipal affairs, as well as the franchises of corporations, is indisputable. The question is, to which does it relate primarily? If to the former, a subject which can be regulated by a law applying to a class of cities, then the act is general; otherwise it is local.

The grant to the passenger railways of the right to use other than animal power, and the grant of power to the councils to give or withhold consent to the exercise of this right by the railways, are two wholly different things, and the one need not have been dependent on the other, as the provision in Article XVII, Section 9, of the Constitution of Pennsylvania, requiring the consent of the local authorities, applies only to the *construction* of passenger railways. An Act simply permitting all

passenger railways to use other than animal power, would have been an Act to increase the utility of their franchises, *i. e.*, practically an amendment of their charters, and it could not have been claimed to be a regulation of municipal affairs. It is hard to see how the subjecting the use of such other motive power to municipal control can make the subject of the law so purely municipal as to warrant a restriction of its operation to a single class of cities.

The language of the Act is, "Passenger railways, in any and all cities of the first class of this commonwealth, may use other than animal power in the carriage of passengers in their cars, whenever authorized to do so by the councils of such city, and the limitations contained in any of the charters of passenger railway companies, restricting them to the use of horse-power, be, and the same hereby are, repealed;" with a proviso as to five-cent fares. The second clause of the Act merely reiterates the first, and expressly includes existing companies in its operation, but does not affect the meaning of what goes before. The Act begins with a grant of a corporate privilege to passenger railways in cities of the first class, and it then proceeds to restrict the exercise of this privilege by requiring the consent of the city councils. The structure of the Act puts forward the corporate grant as the main object to be attained, while the provision as to the consent of councils is then added as a proper restriction, and in analogy to the constitutional requirement of such consent in the case of the construction of a railway.

The title of the Act produces the same impression of its character, as relating to the powers of railway companies rather than of councils. It is "an Act relating to the use of motive power upon passenger railways." Here there is no mention of cities of the first class, nor of the powers of councils, nor of anything but the use, by passenger railways, of motive power upon their lines. There is not even any inferential reference to cities at all, for passenger railways may exist in boroughs and townships as well as in cities. If the real subject of this act is the power of councils in cities of the first class to authorize the use of other than animal power upon passenger railways, than that is not clearly expressed in the title, and the Act is unconstitutional for that reason.

Certainly the editor of "Purdon's Digest" understood the law as one relating primarily to passenger railways, for he placed it among the laws relating to that subject, and not to that of municipal corporations. In so doing, he simply understood the subject of the Act as it would ordinarily be understood, for it can hardly be supposed that the Act was not passed chiefly at the request of the companies themselves, the provision for the consent of councils, like that for five-cent fares, being added in order to facilitate its passage. That the legislature confined the operation of the law to cities of the first class is nothing, for it is notorious, as Mr. HAIG'S note shows, that classification has frequently been used to give an appearance of general legislation to what have subsequently been decided to be special laws.

The Constitution, Article XVII, Section 9, recognizes passenger railways as capable of existing in cities, townships and boroughs, and it requires the authorities of each of these classes of localities to perform

a certain municipal function, viz., to grant a formal consent before any such railway can be constructed within the limits of the locality. Now, it has been held that an Act in regard to the incorporation, government and regulation of street railway companies, an Act whose operation necessarily involved the performance of the municipal function of consent to the construction of such railways, and which expressly provided for the performance of this municipal function before any such railway could be constructed or extended, or could use the tracks of any other company, was an Act in regard to passenger railway companies, and not in regard to municipal affairs, so that the restriction of such an Act to cities of particular classes made it unconstitutional.[1] In Reeves *v.* Philadelphia Traction Co., the Court undertakes to distinguish that case from Weinman *v.* Pass. Ry. Co. on the ground that the latter related to the formation of passenger railway corporations, their corporate powers, stock, dividends, etc., while the former related merely to the use of motive power. It is clear, however, that the construction of a passenger railway upon a street, and the use of one set of tracks by different companies, are just as much matters for municipal control as the use of any particular motive power. The first is indeed expressly made so by the Constitution. The object, too, of the formation of passenger railway corporations, the use to which their capital stock is applied, and the source of their dividends, is this same construction and operation of street railways to which the consent of councils is so essential. The statutes passed upon in these two cases would therefore seem not to differ greatly in character, as the provisions of both are subject to precisely the same exercise of municipal authority, and that for the same reason in each case, the protection of the city's rights. One statute provided for many details, but the consent of councils was necessary in every case before the Act could be made of any practical value; while the other provided for a single matter, also subject to the same consent of councils. If the provision for the consent of councils saved the latter Act, why could it not have saved the former? Conversely, if a statute to regulate many details of the action of certain corporations in certain classes of cities is unconstitutional, though some of the matters are made expressly subject to the approval of councils, and all are practically so, why is the grant of a single right to the same kind of corporations in one class of cities constitutional merely because the consent of councils is provided for?

The case may be looked at from yet another point of view. The leading Pennsylvania case on the classification of cities, Wheeler *v.* Philadelphia, 77 Pa., 338, established the doctrine that such classification is not a means of evading the Constitution through the forms of law—not a means of passing laws which are general in form but local in substance and effect—but that, as all general laws operate upon classes of persons, or in classes of localities, or in regard to classes of things, a law for a properly constituted class of cities (*i.e.*, a class possessing distinct characteristics) in regard to matters which concern those cities especially,

[1] Weinman *v.* Pass. Ry. Co., 118 Pa., 192.

is a general law within the contemplation of the Constitution, just as much as a law in regard to corporations, married women, railroads, promissory notes, or any other class of persons or things. This case and others cited in Mr. HAIG'S note hold, however, that the subject to be regulated by the law must be one which practically requires regulation confined to the particular class, for if it does not, the law will be local or special. Now, it cannot be contended that the regulation of the motive power upon passenger railways is more necessary, more essential to the preservation of the rights of individual citizens from infringement by corporations, in a large city than in a small one, a borough, or a township. Such regulation may concern more people in the one case than in the others, but it is of the same character everywhere. Hence, even if such an Act as that of May 8, 1876, might be regarded as having a municipal character, it does not affect those matters as to which the various classes of municipalities differ, and should not be restricted to one class only.

Even if any reason can be found for requiring the consent of councils to cities of the first class only, or if the provision for five-cent fares be proper in such cities only, it does not follow that the use of the kinds of motive power allowed by the Act of 1876 should have been restricted to those cities. A general subject may often require as to certain details different regulations in the different classes of localities. Thus the fact that under the election law of June 19, 1891, the provisions as to the persons to supply the ballots, the publication of names, etc., for township and borough elections, differ somewhat from those for State, city and county elections, does not make that Act local, those different provisions being appropriate to the different classes of localities, but a law providing for the use of official ballots in certain classes of localities only would be local, the act of voting being essentially an act of the same character everywhere.

For the above reasons it may be seriously questioned whether a general law, designed to carry out the object of the Act of May 18, 1876, could properly be restricted to any smaller class than the whole body of passenger railways in the Commonwealth, subject to the same consent of the local authorities that the Constitution requires for the construction of such railways, and possibly to further restrictions in cities of the first class; and if the Act of May 8, 1876, be less general in its application than its subject demands, then, under Wheeler *v.* Philadelphia, and the line of cases following that decision, it is to be regarded as unconstitutional.

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